

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General

3 LINDA L. SUN  
Deputy Attorney General  
4 State Bar No. 207108  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-6375  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

Case No. **2013-111**

12 **RITA PRINCIPE SARIO**

**STATEMENT OF ISSUES**

13 **Applicant for Reapplication of Examination**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
19 her official capacity as the Executive Officer of the Board of Registered Nursing (Board),  
20 Department of Consumer Affairs.

21 2. On or about March 4, 2009, the Board received a Request for Reapply/Repeat  
22 Examination from Rita Principe Sario (Respondent). On or about February 12, 2009, Respondent  
23 certified under penalty of perjury to the truthfulness of all statements, answers, and  
24 representations in the application. The Board denied the application on June 28, 2011.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the  
27 following laws. All section references are to the Business and Professions Code unless otherwise  
28 indicated.

**STATUTORY PROVISIONS**

4. Section 496 of the Code states: "A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to the subversion of licensing examinations."

5. Section 123 of the Code states:

"It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

"(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

"(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

"Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

1 "In addition to any other penalties, a person found guilty of violating this section, shall be  
2 liable for the actual damages sustained by the agency administering the examination not to exceed  
3 ten thousand dollars (\$10,000) and the costs of litigation.

4 "(c) If any provision of this section or the application thereof to any person or  
5 circumstances is held invalid, that invalidity shall not affect other provisions or applications of the  
6 section that can be given effect without the invalid provision or application, and to this end the  
7 provisions of this section are severable."

#### 8 NCSBN/NCLEX

9 6. The National Council of State Boards of Nursing (NCSBN) develops and administers  
10 the NCLEX-RN examinations on behalf of the nursing boards in the 50 states, the District of  
11 Columbia, and four U.S. territories. Every registered nurse must pass the NCLEX-RN  
12 examination before s/he can be licensed to practice.

13 7. The NCLEX-RN Examination Candidate Rules Checklist states the following:  
14 *"Cell/mobile phones, pagers or any electronic devices may not be accessed at all during your*  
15 *examination appointment (including breaks.)"*

16 8. The NCLEX-RN Candidate Bulletin lists as grounds for dismissal or cancellation of  
17 results the following:

18 *"Using any prohibited aids. Prohibited aids are any devices or materials that will be helpful in*  
19 *taking the NCLEX examination. Examples of aids that are prohibited are electronic devices (i.e.*  
20 *cell/mobile phones, PDAs, hand held computers, etc.), hand held calculators, conversion tables,*  
21 *dictionaries, etc."*

22 9. Before the commencement of an NCLEX-RN examination, each candidate must  
23 review the above rules and affix his/her digital signature, indicating that s/he agrees to the terms.

#### 24 DECEMBER 9, 2010 NCLEX-RN EXAMINATION

25 10. Prior to December 9, 2010, Respondent took the NCLEX-RN twelve (12) times and  
26 failed the examinations eleven (11) times.

27 11. On or about December 9, 2010, Respondent applied and took the NCLEX-RN  
28 examination at the Pearson Professional Center in Gardena, California. During the administration

1 of the examination, Respondent was observed making a call with her cell phone while on a break.

2 12. On or about December 16, 2010, NCSBN sent a letter to Respondent advising her that  
3 she had violated the examination rules, and that her examination results would be cancelled  
4 unless she appealed.

5 13. On or about December 24, 2010, Respondent presented her account of the events in a  
6 letter to NCSBN. On or about January 14, 2011, NCSBN reaffirmed its decision to cancel her  
7 examination results unless she appealed in writing to NCSBN's NCLEX Examination Committee  
8 within 60 days. Respondent did not appeal.

9 14. On or about March 17, 2011, NCSBN notified the Board of its decision to cancel  
10 Respondent's examination results.

11 **CAUSE FOR DENIAL OF APPLICATION**

12 **(Subversion of Examination)**

13 15. Respondent's application is subject to denial under Code sections 496 and 123, in that  
14 on or about December 9, 2010, Respondent engaged in conduct which subverted, or attempted to  
15 subvert the NCLEX-RN examination or the administration of the examination by using a  
16 prohibited device (cell phone) during a break. Complainant refers to, and by this reference  
17 incorporates, the allegations set forth above in paragraphs 6 - 14, as though set forth fully.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the Board of Registered Nursing issue a decision:

- 21 1. Denying Rita Principe Sario's Request for Reapply/Repeat Examination;  
22 2. Taking such other and further action as deemed necessary and proper.

23 DATED: August 9, 2012

24 *Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
25 Executive Officer  
26 Board of Registered Nursing  
27 Department of Consumer Affairs  
28 State of California  
Complainant

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